

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTONIO M. THOMAS,

Case No.: 3:23-cv-00147-MMD-CSD

Plaintiff

Order

V.

Re: ECF No. 1, 7

PEPPERMILL CASINO RESORT,

Defendant

Plaintiff filed an application to proceed in forma pauperis (IFP) which was incomplete No. 1) and pro se complaint (ECF No. 1-1), and he subsequently filed a completed IFP application (ECF No. 5).

I. IFP APPLICATION

A person may be granted permission to proceed IFP if the person “submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.” 28 U.S.C. § 1915(a)(1).

17 The Local Rules of Practice for the District of Nevada provide: "Any person who is
18 unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP].
19 The application must be made on the form provided by the court and must include a financial
20 affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

“[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)

1 (quotation marks and citation omitted). A litigant need not “be absolutely destitute to enjoy the
2 benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

3 An inmate submitting an application to proceed IFP must also “submit a certificate from
4 the institution certifying the amount of funds currently held in the applicant’s trust account at the
5 institution and the net deposits in the applicant’s account for the six months prior to the date of
6 submission of the application.” LSR 1-2; *see also* 28 U.S.C. § 1915(a)(2). If the inmate has been
7 at the institution for less than six months, “the certificate must show the account’s activity for
8 this shortened period.” LSR 1-2.

9 If a prisoner brings a civil action IFP, the prisoner is still required to pay the full amount
10 of the filing fee. 28 U.S.C. § 1915(b)(1). The court will assess and collect (when funds exist) an
11 initial partial filing fee that is calculated as 20 percent of the greater of the average monthly
12 deposits or the average monthly balance for the six-month period immediately preceding the
13 filing of the complaint. 28 U.S.C. § 1915(b)(1)(A)-(B). After the initial partial filing fee is paid,
14 the prisoner is required to make monthly payments equal to 20 percent of the preceding month’s
15 income credited to the prisoner’s account. 28 U.S.C. § 1915(b)(2). The agency that has custody
16 of the prisoner will forward payments from the prisoner’s account to the court clerk each time
17 the account exceeds \$10 until the filing fees are paid. 28 U.S.C. § 1915(b)(2).

18 Plaintiff’s certified account statement indicates that his average monthly balance for the
19 last six months was \$0.08 and his average monthly deposits were \$ 0.00.

20 Plaintiff’s application to proceed IFP is granted. Plaintiff is not required to pay an initial
21 partial filing fee. However, whenever his prison account exceeds \$10, he must make monthly
22 payments in the amount of 20 percent of the preceding month’s income credited to his account
23 until the \$350 filing fee is paid.

II. COMPLAINT

Plaintiff's complaint appears to be missing pages such that the court cannot tell what parties Plaintiff intends to name as defendants. Therefore, Plaintiff will be given leave to file a complete amended complaint. Once he files the amended complaint, the court will screen it under 28 U.S.C. §§ 1915(e) and 1915A, which require dismissal if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune.

III. CONCLUSION

(1) Plaintiff's IFP application (ECF No. 1) is **GRANTED**. Plaintiff is not required to pay an initial partial filing fee. However, whenever his prison account exceeds \$10, he is required to make monthly payments in the amount of 20 percent of the preceding month's income credited to his account until the full \$350 filing fee is paid. This is required even if the action is dismissed, or is otherwise unsuccessful. The Clerk must **SEND** a copy of this Order to the attention of **Chief of Inmate Services for the Nevada Department of Corrections**, P.O. Box 7011, Carson City, Nevada 89702.

(2) The Clerk will **FILE** the complaint (ECF No. 1-1).

(3) The Complaint is **DISMISSED WITH LEAVE TO AMEND**.

(4) The Clerk shall **SEND** Plaintiff the instructions for filing a civil rights complaint by an incarcerated individual and form civil rights complaint by an inmate.

(5) Plaintiff has **30 DAYS** from the date of this Order to file an amended complaint correcting the deficiencies noted above. The amended complaint must be complete in and of itself without referring or incorporating by reference any previous complaint. Any allegations, parties, or requests for relief from a prior complaint that are not carried forwarded in the

1 amended complaint will no longer be before the court. Plaintiff shall check the box for the first
2 amended complaint on the court's form civil rights complaint. If Plaintiff fails to file an amended
3 complaint within the 30 days, the action may be dismissed.

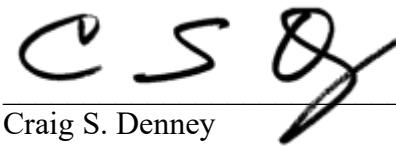
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5 **IT IS SO ORDERED.**

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7 Dated: August 3, 2023

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Craig S. Denney
United States Magistrate Judge

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